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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,904	03/22/2000	MARIE-PASCALE AUDOUSSET	05725.0545	7764

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EXAMINER

EINSMANN, MARGARET V

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 10/25/2002

28

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/485,904	AUDOUSET, MARIE-PASCALE	
	Examiner Margaret Einsmann	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 09 August 2002.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 16-40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16-40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/9/2002 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terranova

Terranova, WO 97/49378, teaches compositions for dyeing hair which contain at least one pyrazolo[1,5-a]pyrimidine compound as oxidation base, which pyrazolo[1,5-

a]pyrimidines encompass those as claimed, and wherein Terranova's preferred pyrazolo[1,5-a]pyrimidines include those as claimed, see page 3, line 7-page 4, line 19; and page 4, line 26-page 5, line 30. The pyrazolo[1,5-a]pyrimidines are present in the compositions in the claimed amounts, see page 8, lines 13-16. Terranova teaches and claims that the compositions may contain an additional oxidation base in the claimed amounts, wherein preferred oxidation bases include the claimed N,N-bis( - hydroxyethyl)-p-phenylenediamine, see page 9, line 24-page 10, line 9; page 11, lines 7-10; and claims 7-8. Terranova teaches that the compositions may also contain a coupler in the claimed amounts in order to modify the shades or enrich the glints, wherein preferred couplers include both m-aminophenols and m-phenylenediamines as claimed, see page 11, line 12-page 12, line 3. Terranova teaches that it is known in the hair dyeing art to mix oxidation base and couplers in order to obtain a wide range of colors, see page 1, lines 13-30. Terranova teaches processes of dyeing hair with oxidants as claimed, and teaches that the compositions may be packaged in kits as claimed, see page 13, lines 12-17; page 13, line 28-page 14, line 2; and page 14, lines 21-28. Terranova exemplifies various compositions which contain a mixture of a pyrazolo[1,5-a]pyrimidine oxidation base and coupler as claimed, wherein each component is present in the claimed amounts, and is applied to hair in a dyeing process as claimed, see Application Examples 2-5, 11-14, 21, 24 and 27. Terranova does not exemplify a dyeing composition, process or kit as claimed, particularly which contains or uses the claimed second oxidation base.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a composition for dyeing hair which contains a pyrazolo[1,5-a]pyrimidine first oxidation base, the second oxidation base N,N-bis( -hydroxyethyl)-p-phenylenediamine, and a m-aminophenol or m-phenylenediamine coupler as claimed, wherein each component is present in the claimed amounts in mediums as claimed, wherein the compositions are applied to hair with an oxidant in a dyeing process as claimed, and are stored in kits as claimed, because Terranova teaches such compositions, processes and kits as preferred embodiments of the patentee's invention. Particularly, it would have been obvious to those skilled in the art to add the claimed second oxidation base to Terranova's exemplified compositions and processes identified above, resulting in compositions and processes as claimed, because the patentee teaches that this claimed additional oxidation base may be added to the patentee's compositions, and because Terranova teaches that it is known and conventional in the hair dyeing art to mix different oxidation bases and couplers in order to obtain a wide variety of colors, absent a showing otherwise.

In the submission of 8/9/2002, applicant states;

A . The examiner has shown no motivation to modify Terranova. As stated above, the only modification it to add an additional oxidation base to the working examples. Terranova suggests the addition of the particular claimed second oxidation base.

B. There is no motivation to select the specific combination of oxidation base as claimed. In response to this statement, patentee teaches the addition of the particular second oxidation base. See page 10 lines 4-11. Accordingly no motivation is needed.

C. Applicant argues that when several bases are combined, it is complicated to predict the color which will result. On the contrary, it is a simple matter to one skilled in the art to mix the component bases and couplers, add to hydrogen peroxide as is conventional, apply to hair, and check the color, as has been done since before the beginning of the century. Note Corbett, pages 128 and 129, wherein he teaches that colorists know the shades that will be produced from conventionally used dye bases and couplers. Note Corbett, page 132, where he teaches partially replacing p-phenylenediamine with N,N,-bis-(2-hydroxyethyl)-p-phenylenediamine used in conjunction with 2,3-diaminoanisole. Accordingly it is conventional to combine more than one oxidation base. Regarding applicant's remarks regarding pH, applicant shows that colorists conventionally test the color formed at various pH's.

Claims 16-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terranova in view of Brody, US 3,884,627.

Terranova, WO 97/49378 is relied upon as in the above rejection as teaching compositions containing applicants' first claimed oxidation base combined with m-aminophenol and/or m-phenylenediamine couplers as claimed, and suggests adding a second oxidation base chosen from conventionally known para oxidation bases as listed in the first full paragraph of page 10. Such list includes the claimed N,N-(bis-

hydroxyethyl) p-phenylenediamine, as well as p-phenylenediamine and p-toluenediamine.

Brody is applied as teaching that the claimed N,N(bis-hydroxyethyl) -p-phenylenediamine was developed as a replacement for the above two para oxidation bases because of the need for oxidation bases to overcome the shortcomings of the above two bases. The disadvantages as listed in col 1 lines 48-64 of col 1 include insufficient resistance to shampooing, alkaline perspiration and light. Additionally, column 2 lines 50 et seq, states that N,N-bis(2-hydroxyethyl)-p-phenylenediamine is safe, that is less toxic than p-phenylenediamine <sup>or</sup> of other structurally related compounds.

It would have been obvious to the skilled artisan to choose N,N(bis-hydroxyethyl)-p-phenylenediamine as the additional oxidation base in the compositions exemplified by patentee because of the advantages it provides over other conventional para oxidation bases, that is, it is safe, and Brody states at col 1 lines 59 et seq. that disadvantages of the prior art are eliminated by using his inventive compounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

*Margaret Einsmann*  
Margaret Einsmann  
Primary Examiner  
Art Unit 1751

October 23, 2002